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A PARTNERSHIP CONDUCTING ITS BUSINESS BY CORPORATIONS AS INSTRUMENTALITIES.

We are indebted to an esteemed subscriber for an advance copy of a very important opinion in Hooper v. Jackson, handed down by Judge Dill, of the New Jersey Court of Errors and Appeals, on February 28th, 1910. By the copy sent, the opinion, reversing Howell, V. C. of the New Jersey Court of Chancery (74 Atl. 130, *sub nom.* Jackson v. Hooper), appears to be by an unanimous court.

It is a matter of somewhat general knowledge among lawyers, that Judge Dill, at the time he went upon the bench in New Jersey, ranked as one of the greatest corporation lawyers in the country and was reputed to be earning, as such, fees, each year, that approximated an almost princely fortune. Whatever leanings he had would, therefore, be supposed to be in a direction of showing the ready adaptation of corporate organization to the needs of commercial enterprise. But this opinion, written in clear, cogent style, appears to tell, between the lines, that Mr. Dill, before he became a judge, was a great corporation lawyer, because he knew, and practiced respect for, limitations upon corporate power. The opinion seems to reflect the mind of one, whose life as a lawyer was to seek and cherish legal principle and not of one, who, under the guise of practicing law, devoted his days and nights to devising schemes to evade its spirit and intent.

The facts showed, so far as necessary to state them for the purpose we have in hand, that Messrs. Hooper and Jackson were carrying on a partnership business, each owning a half interest and having equal power and authority and with neither to transact any other than matters in routine of business in the absence of the other without his previous assent. This business was carried on both in England and America, being a very extensive and profitable subscription book business, beginning in 1900. For reasons unnecessary to state, the partners organized two corporations, one in England under the name of "Hooper & Jackson, Ltd.," to transact business in England and the other the "Encyclopaedia Britannica Company," in this country under the law of Illinois. All the shares were issued to these two and, to comply with English and Illinois statutes, ten shares of stock were issued to three other persons, who, however, it was alleged, in effect, were mere dummies and were not the real owners of such shares. No corporate meetings were held and accounts were kept both in England and America and no dividends were ever declared. Each partner checked on the moneys in bank as he pleased, and the two corporations were looked on as the instrumentalities of a single business. Differences having arisen, Hooper, by means of stock in his name, together with the stock standing in the names of the dummies, managed matters by having the corporations manage the business, instead of the business managing the corporations.

Jackson, therefore, applied for a receivership for a partnership. The vice-chancellor held there were joint adventures, but the law governing partnership applied. The chancellor, finding as a fact that the whole business was carried on as one, laid no great stress on the fact that corporations were mere agencies in the matter, except that being such the mere appearance of stock ownership in dummies could not be taken advantage of by Hooper to oust Jackson from his equal right and power, as formerly exercised.

Judge Dill considers that whether the business was a partnership or joint adventure at the beginning is immaterial, as by act of the parties it had come to be the business of two corporations, and the policy of the law forbids its being considered from any other standpoint. His summary is as follows: "We hold that the parties are not partners as to the corporate property, but merely stockholders in two foreign corporations, distinct legal entities; that the agreement whereby these dummy directors were bound to act in accordance with the will of the complainant and Hooper was illegal and therefore unenforceable in any court; that the whole subject matter of the controversy relates to the management of the internal affairs of two foreign corporations; that the Court of Chancery has no jurisdiction to entertain the bill," etc. In short, the court holds, that whatever was the purpose and intent of these partners and whatever course they pursued afterwards, when they formed corporations and transferred their respective holding therein title passed to the corporations and continued there to remain as well between the owners of all of its shares of stock as outwardly to the world.

Judge Dill says: "The law never contemplated that persons engaged in business as partners may incorporate, with intent to obtain the advantages and immunities of a corporate form, and then, Proteus-like, become at will a copartnership or a corporation as the exigencies or purposes of their joint enterprise may from time to time require. * * * They cannot be partners *inter sese* and a corporation as to the rest of the world. Upon grounds of public policy the doctrine contended for cannot be tolerated, as it renders nugatory and void the authority of the legislature—a co-ordinate branch of the government—established by the constitution, in respect to the creation, supervision and winding up of corporations."

He then cites numerous English cases in support of the view that, if the corporation is a legal entity, it owns the property and if it is not such entity, it cannot be an instrumentality. He then traces back American decision to the same effect. In discussing the alleged agreement between Jackson and Hooper, that the other shareholders should be mere nominal directors subject to dictation and control and its enforceability, he says: "The law confides the business management of a corporation to its directors. They represent all of the stockholders and creditors and cannot enter into agreements, either among themselves or with stockholders by which they abdicate their independent judgment."

This principle is undoubtedly sound, but, if one were to follow the ruling in Old Dominion S. C. & M. Co. v. Lewisohn, 210 U. S. 206, which we considered in 70 Cent. L. J. 219, might it not be answered: Yes, but if Jackson and Hooper owned the corporations could they not do as they liked in this, and have either dummy or real directors as they saw fit?

Judge Dill speaks here of their duty to creditors notwithstanding, that here was a business overflowing with surplus wealth, and we conceive that he meant that directors' obligations to be independent were not thereby made a mere form.

There runs through this opinion a lofty sentiment, and the lesson taught is, that statutory or constitutional regulations of corporations are not mere forms which are to be neglected so long as third persons acquire no interest in their observance, but that, when the status is chosen to which these regulations apply, a former status is definitely and for all purposes abandoned.

It is only upon this principle that corporate existence with its privileges, liabilities and exemptions may be adjudicated upon, unembarrassed by extraneous considerations.

NOTES OF IMPORTANT DECISIONS.

APPEAL AND ERROR—PENALTY OF REVERSAL ON APPELLEE FOR FAILURE TO FILE BRIEF.—We have read of courts complaining of too many and too long-winded briefs, and we had rather reached the conclusion that the fewer and briefer the briefs the brevity, numerically and physically, was the more appreciated. We also have occasionally seen and read of cases where both parties wanted a new trial and courts being of the view that the public had contributed as much in expense and trouble and in demand upon other people's time as the parties were entitled to, no concurrence of desire on the part of suitors had anything to do with the question. But a rule and its application in Oklahoma Supreme Court, made for its convenience in dispatch of business, appears to point the way for this mutual dissatisfaction being appeased.

This rule provides for filing of briefs by counsel and "in case of failure to comply with the requirements of this rule, the court may continue or dismiss the case, or reverse or affirm the judgment." See Butler v. McSpadden, 107 Pac. 170.

In this case counsel for appellee failed to file a brief, and the court said, Williams, J., dissenting: "We have read the brief filed by counsel for plaintiff in error and from a consideration thereof it seems to us that the point made that the judgment lacks evidence sufficient to sustain it is well taken. In the absence of a brief on the part of counsel for defendant in error, we are not given that assistance which we should have in determining the theory upon which the court rendered its judgment, and the pressure upon the time of the court is such that it cannot, in justice to other litigants, brief cases for parties who elect to neglect it."

We do not know whether the court did anything further in this case than look at the brief filed by plaintiff in error, but we see that it denied that the case should be reversed without a remand, and it was reversed and remanded. Appellee's failure may even have helped him.

We do know that the court cited authority that the appellate court would "assume without looking at the record, that the point urged by appellant that the evidence is insufficient to justify the findings attacked is well taken." This is said to be the California rule, as see Richter v. Imgston, 101 Cal. 582.

The Kansas Court of Appeals has gone almost to a like length, but not quite. It said it would not carefully search the record to see if there was evidence to sustain a judgment, where appellee filed no brief. And there may be a few other cases that squint that way.

But the rule seems to us wrong. An appellate court may very properly make a rule for the filing of briefs and penalize appellants to the extent of not examining into cases for violation thereof. But an appellee is before an appellate court with a judgment presumptively correct, and he is entitled to stand on it until by an examination of what it rests on it appears to be incorrect. Until the burden of attack thereon has been met and shifted his vested right in that judgment should be recognized.

Every jurisdiction recognizes validity of a judgment in trial court, because no supersedeas can arrest its enforcement until security for its payment shall have been given.

If this is true, ought not an appellee's standing in an appellate court to be regarded as that of a privilege, the non-exercise of which takes away from him no right that ought not to be taken away.

All courts say briefs are desired for 'assistance" to the court, but we greatly doubt whether any are filed for such an altruistic reason, and the courts know they are not. The appellee files a brief because he fears the court may be misled, but if his fear is not keen enough to make him put up cold cash he ought to be allowed to elect.

We do not know if Oklahoma practice allows appellee's brief to be taxed as costs. We do not believe this is often allowed.

PUBLIC HEALTH—REGULATIONS AS TO LICENSES TO UNDERTAKERS AS BEING IN CONFLICT WITH FOURTEENTH AMENDMENT.—A New York statute requiring that no person could be licensed as an undertaker unless he shall also have been licensed as an embalmer and shall have been an assistant to a licensed undertaker "continuously" for at least three years, was lately condemned as violative of the Fourteenth Amendment of the Federal Constitution, the decision being an unanimous one by New York Court of Appeals. People v. Ringe, 90 N. E. 451.

The statute was attempted to be defended under the state's police power, exercised in respect of the public health.

The court freely concedes that it is within the state's police power to regulate the care of dead human bodies, and their disposition by burial or otherwise, as all of this is closely related to the health and general welfare of particular communities. This statute, however, appeared to the court as being so arbi-

trary and unreasonable in its requirements, that the court was convinced it "was conceived and promulgated in the interests of those then engaged in the undertaking business, and that the relation which the business bears to the general health, morals and welfare of the state had much less influence upon its origination than the prospective monopoly that could be exercised with the aid of provisions."

Nothing, therefore would seem so sacred as to be immune from attack by the commercial spirit. Death, instead of arresting, is attempted to be made an adjutant in its behalf.

The opinion quotes very extensively from Wyeth v. Board of Health, 200 Mass. 474, 86 N. E. 925, 128 Am. St. Rep. 439, from which is quoted approvingly the following: "No argument has been addressed to us to show that the general embalming of dead bodies is necessary for the preservation of the public health, and we know of no facts that indicate such necessity. Except in those cases where embalming is desired for a special reason, we know of nothing connected with the duties of an undertaker that calls for the work of a licensed embalmer. In cases generally it is not an essential part of the duties of an undertaker and it has no relation to the public health."

It was further said the "continuous service" requirement was arbitrary, if intended to exclude all other, as the only requirement the state can make is length of service, whether continuous or interrupted, which would presume qualification in one applying for a license as an undertaker.

The bold attempt by this kind of legislation to turn a power for the benefit of the community into foisting upon it a monopoly seems to us most rightfully and forcefully rebuked. The court well said: "The business of undertaking has been carried on for generations, particularly in the rural districts, by persons not holding embalmers' licenses, and who have no special knowledge of the work of embalmers." If detriment to health from the lack of embalmment has not been proven, it would seem useless to hope it ever will be.

ELECTRICITY—THE SUBJECT OF LARCENY.—Judge Charles S. Lobingier, judge of the Court of First Instance for the Judicial District of Manila, lately decided that electricity was the subject of larceny or its Spanish equivalent "hurto." U. S. v. Jose de Leon, Feb. 3d, 1910 (not reported.)

The article under the penal code, under which prosecution was brought, read, as translated in the opinion, as follows: "The following are guilty of larceny (hurto): Those who, with intent of gain and without violence or intimidation, against the person or force against things, shall take another's personal property without the owner's consent."

The judge came to the conclusion that it was, because by decisions by the Spanish Supreme Tribunal, rendered in 1887 and 1897, construing a similar section in Spanish law, it was held that the appropriation of illuminating gas belonging to another was "hurto," or larceny.

The chief contention made was that electricity was an energy and not a corporal substance, but the judge thought that, as its effects, like those of gas, could be seen and felt, and the act of appropriation in each case consisted in the production of the effects, which appropriation involved or resulted from the consumption of enforced things, the rule as to gas should obtain. Authority was cited to show that the common law agreed with the Spanish as to gas.

Here a door would seem open for a very interesting inquiry, and assuming that Spanish jurisprudence rests on the principles of the civil law, it would seem the learned judge should have sought his rule there, instead of resorting to the common law at all. The old common law refinements about asportation, etc., may have their counterparts in the civil law, but it has seemed to us that the law of larceny has always presumed that taking or asportation was in the single act of the thief and depended on no contingency of the happening of a subsequent act put in motion by another.

Let us illustrate as to an undoubtedly corporal substance. Suppose water is to be turned into an irrigating ditch at a certain time, and in advance thereof one not entitled to use the same arranges for its diversion. Certainly there is no larceny until diversion results, and then it comes through the intervening act of another. Taking then is aided, or, as we might say, asportation is accomplished, by a lawful act. So might it be if the wrongdoer connects his pipe or wire with another's as the expected source of supply of gas or electricity, when this shall be afterwards turned on.

If gas or electricity is not diverted eo instanti the connection there would seem to be a mere trespass, and yet whether it is immediately diverted or not depends upon the flow being continued. If one were conveying apples by some sort of endless chain and there was a manual caption as they were passing along, this would be larceny, but if there was a mechanism installed in advance to catch them as they may be made to pass, here would be another question. The mechanism would not distinguish between good apples and bad apples, and all

our notions about intent and alibi must to some extent be reformed if this is larceny.

CORPORATIONS—SUBSCRIPTIONS UPON CONDITIONS NOT COMPLIED WITH.—We discussed, in a comparative way, in 70 Cent. L. J. 219, two decisions respectively by the Federal Supreme Court and the Massachusetts Supreme Judicial Court on the question of the fiduciary relation of promoters to a corporation. We thought the former of these two decisions found a reason for exception to a principle which had no salutary basis in principle.

The case of Sigler v. R. W. Winstead & Co., 125 S. W. 272, decided by Kentucky Court of Appeals, proceeds on the theory that if a promoter solicits a subscription it is his business not merely to answer honestly and fairly all questions that may be asked him about the corporation or proposed corporation, but he is not allowed by silence to lead a proposed subscribed to believe that previous subscriptions are not what they appear to be, when the promoters know the contrary was true.

The facts in this case showed that a subscription to a business enterprise provided for its becoming effective when bona fide subscriptions to a certain amount were obtained.

This was only accomplished by counting subscriptions to which were annexed secret agreements for reduction in price, payment in goods, services, etc. The subscribers proposing to pay cash were held entitled to cancel their subscriptions, notwithstanding that promoters offered to make up the difference in the other subscriptions.

The court said: "Each one as he subscribed, not only had the right to rely upon the integrity of the paper as presented to him, but he was justified in the belief that the subsequent subscriptions would be taken so as to meet the requirements of the contract, to-wit: at 100 cents on the dollar, and be payable in cash."

It is a ruling like this, which serves to make more precarious the boosting of fake enterprises and the more salutary business conditions. A promoter who evolves an idea, which his persistency in nerve and persuasiveness may develop, comes to regard himself as a sort of Columbus in discovery. Probably statutes may evolve some plan to secure good faith in representations of these promoters, and tentatively we suggest that no promoter's shares shall be issued to him until all others are taken, except to the extent he pays actual cash therefor, and that these and those to be issued to him upon property or services be impounded to answer any injury suffered by another, for misrepresentation in obtaining subscriptions. A promoter ought not to have a vote in organization or be allowed to qualify as a director, except upon a cash subscription, and even then he should not be allowed on the board, if the main asset of a proposed corporation is property proposed to be transferred to the corporation, until some fixed period shall have elapsed thereafter.

A REVIEW OF AUTHORITIES UPON THE CONSTITUTIONALITY OF THE FEDERAL CORPORATION TAX STATUTE.

This statute has been discussed by law magazines, newspapers and in speeches, with respect to its constitutionality and the claimants for and against constitutionality have endeavored to sustain their conclusions by decisions of the federal supreme court. There is no very great multiplication of authority in diversity of view, but the cases referred to are fairly numerous and it is our purpose to present all or nearly all of these, grouped or classified and compared, to indicate as far as possible what of adjudication there is, which may be of importance upon this vexed question.

I.

What is the Thing Taxed?—This preliminary inquiry ought to help in the classification we purpose making. And right here we find ourselves in a state of doubt. The first section of the act most assuredly does not apply to any foreign corporation *not* engaged in business in this country and it is equally certain, that the tax as to it is not upon any income other than of business "transacted and capital invested" in this country. Therefore it may be confidently said, that a foreign corporation merely having investments in this country, but doing no business here, does not come within the statute. Therefore further, it may be said, with certainty, I think, that the tax as to a foreign corporation is upon the privilege of doing business.

But how stands the matter as to domestic corporations? Do they have to be "engaged in business" in this country to be-

come subject to the tax, or, if they merely have investments and do no business are they subject to the tax? The words "engaged in business," etc., might be claimed to qualify only foreign corporations, but such limitation is more difficult to be claimed for the words "with respect to the carrying on of business," etc., following after "shall be subject to pay annually a special excise tax" which words, beyond any peradventure of doubt, apply both to domestic and to foreign corporations. Up to this point in the section it looks like the doing of business is a condition absolute to becoming subject to the tax. But the domestic corporation is taxed differently from the foreign. The former is taxed upon income received "from all sources," and that this includes what does not arise from the transaction of business, the exception stated being in regard to dividends from corporations also subject to the tax. Does this difference show that there is a tax upon domestic companies, as if they were natural persons, and, therefore, two different kinds of tax provided, one on domestic corporations, whether they do business or not, and another on the privilege exercised by a foreign corporation to do business? That the tax on domestic corporations may embrace their investments outside of the United States, while that on foreign corporations touches only their investments in this country, seems not decisive of this inquiry, for, whether the tax be merely on a privilege to do business in one or both cases, it is different, and in favor of the foreign corporation. There is at least a difference in estimating the income to be taxed, and the *rationale* of its allowance exists under one aspect of this matter the same as under the other, because it is certain it is a tax upon privilege, merely, so far as foreign corporations are concerned.

It is difficult to see how with merely a distinction between the basis for computing the tax it may be thought there are two kinds of tax attempted to be imposed. Therefore, I take it, that the tax is upon one thing—the privilege of doing business—and that every domestic business corporation is presumed to be engaged in the transaction of business in the United States, so long at least as it is a going concern. If its income is entirely from investments, it does business in exercising its judgment about its investments and reinvestments, as its policy, through its board of directors, may require.

II.

As a Tax on this Privilege is the Tax Constitutional?—This question should be subdivided with reference to domestic corporations and foreign corporations, and again by classification of domestic corporations into state, congressional and territorial. If it may be thought the tax is constitutional as to some one or more of these corporations, but not as to all, then the question would arise as to separableness, so as to save or not the legislation.

Let us take the corporations in the order indicated, first considering domestic corporations "organized under the laws of any state?"

If, as is now assumed, this is a tax upon the right of a private corporation organized under state law to do business, is it constitutional?

In The Collector v. Day,[1] it was decided that the tax by the federal government of the salary of a judicial officer of a state was unconstitutional because this was taxing "the means and instrumentalities" necessary for a state to carry on its government. In Mercantile Nat. Bank v. New York,[2] the obligations of indebtedness of states were similarly non-taxable.[3] So as to municipal bonds. Both of those were deemed taxes upon the power of the state and its instrumentalities to borrow money. In Pacific Ins. Co. v. Soule,[4] it was decided that a tax on business is not a direct tax and therefore constitutional. The business there happened to be by an insurance company, but it came under the designation "all persons," etc., and therefore the question here, seems not there, involved—condition-

(1) 11 Wall. 113.
(2) 121 U. S. 138.
(3) Pollock v. Farmers' Loan & Trust Co., 158 U. S. 429.
(4) 7 Wall. 433.

ing the doing of business by a state corporation which in the Soule case stood like an individual to the government upon its doing business when an individual is not now so conditioned. South Carolina v. United States,[5] has been claimed to derogate somewhat from the principle, that a state instrumentality cannot be taxed by the fededal government, as there the state dispensaries were taxed on the sale of liquor. But I do not so construe this holding. The logical effect of the holding is that the state cannot by legislation make a corporation or agency municipal in its character so as to defeat federal taxation, if the doing of things by or through that corporation or agency is engaging in private business. But here is furnished an opportunity to state clearly, by illustration, the point which seems to me to be involved. Suppose an internal revenue law were to declare that no revenue tax should be imposed on the sale of liquor, unless it be sold by state dispensaries. Would not that be a law aimed at the exercise by a state of a constitutional power and therefore invalid? Suppose again this tax was attempted to be imposed only upon corporations organized under state laws and foreign corporations, congressional and territorial corporations engaged in business were not taxable, would this not be legislation likewise aimed? But is there not just as patent a discrimination between state corporations and natural persons, and does it not equally aim, by necessary construction, at the constitutional right of the state to create corporations? As the distinction between natural persons and corporations found in this act has not been heretofore attempted we have no precedents on this subject.

III.

The Inheritance Tax Cases.—It has been claimed that the power of congress to impose a succession or inheritance tax is authority for deduction from what would otherwise be distributed to shareholders in net income. But it seems to me the underlying principle in the succession tax cases decided by the supreme court is easily differentiated from what is here the question. In United States v. Perkins,[6] the question was whether the United States took its bequest free of state charges for transmission, and in Snyder v. Bettman,[7] the correlative proposition was whether Springfield, Ohio, took its bequest free of the federal tax. Both the national government and states were held to have the power to impose such a tax. It was said the tax was valid because it was a tax "not upon property, but upon the right to succeed to property," and there was no conflict "with the proposition that neither the federal nor the state government can tax the property or agencies of the other." In the case of income of a corporation there is a vested interest inhering in shares of stock, and it would be depriving shareholders of property without due process of law to prevent its being paid. If the government can not take the whole of the income, how can it take any part? If it can take a part, may it not take the whole?

IV.

Income "from All Sources."—It seems difficult to claim that income from all sources is not intended to cover income derived from property which congress has no power to tax either directly or indirectly, or from rents, a tax upon which is forbidden as being direct, because the specific exception is of dividends from companies subject themselves to this tax. But it has been claimed that, because a bank may be taxed on the amount of its deposits though it has money invested in government securities,[8] and tax may be laid upon the privilege of taking property by will, though it be government bonds,[9] this question is foreclosed. But just as in the latter case the tax is on a privilege, so it was in the former, the state putting this tax on the corporation's right to exist. See also Home

(5) 199 U. S. 437.

(6) 163 U. S. 625.
(7) 190 U. S. 249.
(8) Society for Savings v. Coite, 6 Wall. 594.
(9) Burdeck v. Ward, 178 U. S. 139.

Ins. Co. v. New York,[10] where a state statute taxing certain corporations on "net earnings on income from all sources," though some of these came from interest on United States bonds, and compare with N. Y., Lake Erie, etc., Co. v. Pennsylvania, where tolls paid by a railroad doing interstate commerce were taxable only as to the proportion of its line within the state. Just as the state was not allowed to lay a tax on tolls outside of its borders, because it affected the privilege of the railroad to engage in interstate commerce, so the federal government cannot tax the privileges of state corporations to acquire income from state and municipal securities. It does seem to me that, if a state cannot tax the privilege of a corporation to receive tolls from its lessee engaged in interstate commerce, so far as those tolls are payable for extra-territorial service, then congress may be forbidden to tax moneys paid to a corporation in themselves not taxable, when the privilege of the corporation to exist is over and beyond any power of congress to prevent. This reasoning applies to income derived from everything non-taxable by the government of the United States.

V.

The Pollock Cases.—The income tax law decided by the Pollock cases to be invalid provided that: "In computing incomes the necessary expenses actually incurred in carrying on any business, occupation or profession shall be deducted and also all interest due or paid within the year by such person on existing indebtedness." While the method of arriving at net income in this law has more in the way of deduction, there seems nothing in the way of escape from the ruling in the cases that a tax on net income was invalid in so far as it was derived from property, and "all sources" includes business and property.[11] This result repudiated the old theory, or rather approved its repudiation in a later case, that receipts from a non-taxable source being covered into the hands of the collector and forming part of an indistinguishable mass lost their distinctive character, as decided in State Tax on Railway Gross Receipts,[12] the approved repudiation being announced in Phila., etc., S. S. Co. v. Pennsylvania.[13]

(10) 134 U. S. 594.

(11) See Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 158 U. S. 601.

VI.

The Uniformity Clause of the Constitution.—This clause was not considered by the Pollock cases, that is to say, there was no decision of the question in the first of these cases, as the court stood equally divided, and in the second case the decision went upon other grounds. But since those cases were decided the construction of that clause has been concurred in by eight of the court then sitting, Justice Peckham taking no part in the decision.[14] In this case it was held there was merely meant a geographical and not an intrinsic uniformity that is to say, "laid to the same amount on the same articles in each state," though the burden of this might be felt more in some parts of the country than others.[15]

VII.

The Exemption Feature as Creating Inequality.—In the decision of the first of the Pollock cases, eight of the nine judges sitting, it was urged among other reasons that there was an inequality and lack of uniformity in the exemption, but the court was equally divided on this question. But it is claimed that a later decision sustaining a statute laying an excise tax on incomes from certain businesses having receipts in excess of $250,000 a year,[16] and another sustaining taxes according to a progressive rate, dispose of such a contention. As to the Spreckles case, it is to be said no point of this kind was discussed at all. The cases in which a progressive rate of tax was imposed were inheritance cases, and as the court ruled this tax was based on a right to succeed to property and not on property, they might not be considered controlling.[17] In the case of this tax

(12) 15 Wall. 284.

(13) 122 U. S. 326.

(14) Knowlton v. Moore, 178 U. S. 41.

(15) See, also, upon this question, Patton v. Brady, 184 U. S. 608.

(16) Spreckles v. Sugar Refining Co., 192 U. S. 397.

(17) Knowlton v. Moore, supra; Magoun v. Illinois Trust, etc., Co., 170 U. S. 283.

it is either on property or it is on the right of a corporation, as distinguished from a natural person, to engage in business. The Spreckles case was a tax on receipts in a business, but the statute referred to persons, companies and corporations engaging in such business. What, however, is the sort of inequality that this exemption brings about? One corporation with 1,000 shares has a net income of ten thousand dollars; this exemption cuts its taxable income down to one-half and the ultimate payer of the tax is relieved of fifty per cent of the general burden. Another corporation with a like number of shares has a net income of fifty thousand dollars and the benefit the ultimate payer gets from the exemption is ten per cent. Putting it differently, the individual, who cannot be taxed under such a statute, as the Pollock cases hold, yet has a deduction from what is coming to him in one case, of fifty per cent of his income, and in the other ten per cent. Is that even geographical uniformity?

Corporations Not Considered in Pollock Cases.—As the former income tax law was held unconstitutional in parts only and it was deemed, that these parts were so connected with what was constitutional as to make the entire law fail, the question of corporation incomes as being corporate property where they were ready to be distributed as dividends, instead of being the property of the shareholders, was not passed upon. It might be easy to see why an income tax law might be aimed at incomes of natural persons and not at profits of corporations, because what of their profits is paid to shareholders goes to swell the latter's incomes, making them ultimately taxable in the final resting-place of profits. But to tax profits of corporations and not the incomes of individuals, not otherwise arising, is in its essence to say that individuals are taxed upon their shares of stock. Then the question comes up whether this is not a direct tax levied without any constitutional apportionment. The supreme court, looking behind the form of the tax to its real effect would have to say this is a tax on the profits of a *chose in action*—a share of stock, and by the decision in the Pollock case, it is unconstitutional.[18]

VIII.

The Indivisibility Feature as to What is Controlled by the Pollock Cases.—The Pollock cases decided two points and held that their unconstitutionality carried the conclusion that congress did not intend that the law should exist in their absence. These two points were that taxes on real and personal property and on the rent or income from either were direct taxes and not leviable except through constitutional apportionment. If, therefore, income from all sources is by this statute to be construed to brace either of the above things, is the statute to stand with such source of income eliminated? One of the prime difficulties lying at the threshold seems to me either to get the supreme court to overrule the Pollock cases as to these taxes, or to show this broad language was not intended to embrace such income, or that the same result in indivisibility of sources of income does not follow from the same elements of illegality.

N. C. COLLIER.

(18) As to whether the tax is or not on shareholders see 70 Cent. L. J. 91, and authorities cited.

INCEST—PRIOR ACTS OF INTERCOURSE.

SKIDMORE v. STATE.

Court of Criminal Appeals of Texas, December 22, 1909.

In a prosecution for incest alleged to have been committed in December, evidence of other acts of intercourse by accused with the prosecuting witness in October and November was not admissible; one act of intercourse being sufficient to constitute the crime, under Pen. Code 1895, art. 349.

DAVIDSON, P. J.: The state relied upon the testimony of prosecutrix. Under her testimony she was an accomplice, having consented to the intercourse, about which she

testified. Appellant's testimony is that he was not guilty, and was not intimate with prosecutrix, but that she was intimate with others, and introduced such evidence along those lines as the court would permit. Testifying in his own behalf, he denied any act of intercourse and offered testimony, much of which was rejected, going to prove bad conduct on the part of prosecutrix with other men. Over appellant's objection, the state was permitted to introduce evidence of acts of intercourse between prosecutrix and appellant other than that relied upon for conviction. The act relied upon occurred in December. The other acts under her statement occurred during the previous months of October and November. We are of opinion this evidence was improperly admitted. It seems from the bill of exceptions the court admitted this testimony under the authority of the recent case of Barrett v. State, 55 Tex. Cr. R. 182, 115 S. W. 1187. That case was decided upon the authority of Burnett v. State, 32 Tex. Cr. R. 86, 22 S. W. 47. The Burnett case had been overruled in Clifton v. State, 46 Tex. Cr. R. 18, 79 S. W. 824, 108 Am. St. Rep. 983, and followed in Gillespie v. State, 49 Tex. Cr. R. 530, 93 S. W. 556; Wiggins v. State, 47 Tex. Cr. R. 538, 84 S. W. 821, and French v. State, 47 Tex. Cr. R. 571, 85 S. W. 4. In deciding the Barrett case, supra, this court overlooked the fact that the Burnett case, supra, had been overruled in Clifton v. State, and followed in subsequent cases. We are of opinion that the case of Clifton v. State and subsequent cases are correct. Incest is not a continuous offense. One act of intercourse is a sufficient predicate upon which to base a conviction. This has been held in all of the cases, and may be said to be without exception. And it is necessarily so under the definition of the offense as found in article 349 of the Penal Code of 1895. The same rule obtains in rape cases. A single act of rape or incest, either, if proved, is sufficient to justify a conviction. Such is the rule in Texas, and such seems to be the rule in all the states. This rule does not apply, however, to adultery. Under our statute adultery may be constituted in one of two ways, first, by living together, and having intercourse, or by having habitual carnal intercourse without living together. This makes it in a sense a continuous offense. In other words, the definition of "adultery" has such characteristics that one act is not sufficient unless where the parties are living together. The rule has been laid down and followed in many of the states that prior acts of illicit intercourse between the parties are inadmissible as corroborative evidence. The office of this corroborative evidence seems to be under the authorities, to render it probable that by reason of the prior act or acts a party would be the more likely guilty of the acts for which he is being tried. This rule has not been followed in all of the states, and the reason for the rule is not founded upon sound principles. Prior acts, under such circumstances, may be introducible; but where the state has made out its case the rule does not obtain. These exceptions are well known to courts and the profession. This character of evidence introduced through the mouth of prosecutrix certainly could not corroborate her statement, for she is an accomplice, and cannot corroborate herself. If the other acts of intercourse between the parties in rape and incest were admissible, then it is a self-evident proposition that the accused has a right to defend against each act introduced, and meet it with such testimony as he can show that it did not occur. Under this state of case, the accused would be authorized to defend against an indefinite number of illicit acts introduced by the state which are in no way connected with the one for which he is being tried, and the trial would stretch out over such transactions for perhaps years. Under these circumstances the trial on the main case would be lost sight of in introducing evidence pro and con as to the prior acts. Under such state case, appellant would be called upon to answer for such acts of illicit intercourse about which he had no notice in the indictment, and of which he was in no way legally apprised would be used against him; and it would doubtless further result in a conviction on general principles instead of for the particular offense alleged against him. This court has for years held, in incest and rape, evidence of prior acts inadmissible, and the decisions place the two offenses in this respect upon the same basis. We believe the rule ought to be, in this character of cases, and all others, that the accused should be tried for the offense of which he is indicted, and that the state would be prohibited from going out and hunting up the derelictions of a life, or for years, and inject them into the case simply to show the probability that, because he had heretofore been guilty of something, therefore he might be guilty in the case on trial. We think that on sound reasoning and on principle and decisions in Clifton v. State, supra, and those cases that follow it, are correct and enunciate the correct doctrine. The Barrett case, 55 Tex. Cr. R. 182, 115 S. W. 1187, therefore is overruled. We hold, therefore, upon a review of the whole question, that the rule laid down in the Clifton case, supra, and those cases that are in accord with and follow it, is correct.

Judgment reversed.

NOTE—*Admissibility of Prior Acts of Intercourse in Incest Cases.*—We find no cases in accord with the principal case, but the reasoning that finds an exception in sexual cases appears to us as inherently weak and contradictory in the cases, which we set forth in this annotation. In People v. Stratton, 141 Cal. 604, 75 Pac. 166, the court ruled that it was competent to show frequent acts of intercourse with the defendant father, but no argument therefor was advanced, there being merely citation of authority of cases which are referred to among others in this note. The prosecutrix was not permitted, however, to be asked on cross-examination about intercourse with others, as this "would in no way have tended to disprove the charge" and the case of State v. Winnenbaum, 124 Mo. 423, was quoted from, where it was held that reputation or character for chastity and virtue was not material. But when later on the state showed by medical evidence the condition of her sexual organs, the court said she could have been recalled, but was not, and questioned about intercourse with others. The distinction here seems a very narrow refining, if it has any basis whatever. There could be no dispute in recognized physical laws about condition of organs as arising from intercourse with one or several persons, if intercourse was frequent. The court seemed not well satisfied with its ruling and disposed to shift responsibility therefor. This case does not cite prior California cases. In People v. Patterson, 102 Cal. 239, it is said cases of incest and adultery are exceptions to the general rule, as well settled, that proof of a distinct and different offense is not allowed, and it cites, among others, the case of People v. Cunningham, 66 Cal. 668.

Why the Patterson case should have been referred to is somewhat difficult to apprehend or even imagine. It was a larceny case and no allusion whatever is made to cases of sexual intercourse and the general rule as to admissibility of evidence of other offenses is stated to be, to show "connection between the offenses in the mind of the criminal," itself an exceedingly broad statement. The court says: "When such connection is shown, evidence of the others is admissible for the purpose of establishing identity in developing the *res gestae* or in making out the guilt of defendant by a chain of circumstances connected with the crime with which he is on trial." If it does not serve for such purpose it is inadmissible. The later California cases say distinctly sexual cases are exceptions to this rule.

In Taylor v. State, 110 Ga. 150, 35 N. E. 161, the court admitted testimony by the female of acts of sexual intercourse prior to the time within which prosecution would be barred upon a principle stated in 2 Greenleaf on Ev., sec. 43, that: "Where criminal intercourse is once shown, it must be presumed, if the parties are still living under the same roof, that it still continues, notwithstanding those who dwell under the same roof are not prepared to depose to that fact." The philosophy of this reasoning is somewhat obscure when the prosecutrix is the sole witness to the prior acts, and still more obscure when no one else under the same roof is prepared to depose to the subsequent acts. That is something like the logical absurdity of proof of *idem per idem*. If independent evidence showed the prior acts the corroboration by proof of opportunity for continuance would be clear. In the same paragraph of the opinion the court recognizes that such proof of corroboration is in some sense weak, as it "cannot be regarded as affording the kind of corroboration which the law makes necessary to support the testimony of an accomplice," as this "must come from a source or sources other than his or her own testimony." It seems to me that the testimony was merely admitted for the purpose of testing the accuracy of her statements, as to subsequent acts, and thus show the charged act within the statutory period. That, it would look like it is a matter proper for cross-examination, and not an excuse for the state eliciting damaging evidence against the accused. No stress is laid upon sexual intercourse being exception to the ordinary rule.

Lefforge v. State, 129 Ind. 551, is precisely like the Stratton case *supra*. It cites prior cases and those from other states. The principal Indiana case on this subject is State v. Markins, 95 Ind. 464, in which the authorities are reviewed. This case proceeds on the theory that "evidence which tends to establish facts rendering it antecedently probable that a given event will occur, is of material relevancy and strong probative force." Therefore, it is said: "It cannot be doubted that it is competent to show the previous intimacy between the persons charged with incest, their behaviour towards each other and their acts of impropriety and indecency."

But where would the logic of such a rule take us? Suppose we apply this quality of reasoning to a case of burglary. A is acquainted with B and knows that the latter is careless in the protection of his premises, or that he is somewhat of a criminal and timid about prosecuting for burglary, and, therefore, it is competent to prove a prior burglary by A for which B instituted no prosecution, as leading to the probability that A, knowing of opportunity and that he would probably not be prosecuted, committed the act of burglary for which he is on trial. Similar reasoning might be applied to a case of obtaining money under false pretenses, and to such an endless variety of cases as would, practically, make exceptions supplant the recognized rule about distinct offenses not being provable.

We can conceive why testimony of antecedent acts of intercourse would be admissible to show intent in the doing of that which otherwise might have little probative force. Thus, if a relative were seen going into or issuing from the room of a female in the household, this might not be so opposed to the familiarity existing among members therein as to carry even suspicion of improper relations, while proof of such relations antecedently would tend to stamp the intent of his presence in the room. But if merely the bare fact of intercourse is shown, that seems no more than the bare fact of any other criminal offense. In State v. Hurd, 101 Iowa, 391, it was said, it is "the rule as to adultery and crimes of that character that similar acts between the parties, not contemplated by the charge, may be shown to disclose the relation and disposition between the parties as bearing on the probabilities of the act as charged." But why not the same rule as to conspiracy? Adultery is, in its nature, conspiracy, and so might be incest, especially if the female is an accomplice. In Smith v. Com., 109 Ky. 685, 60 S. W. 531, both the male and female were being tried

and there was evidence of two acts by different witnesses. State v. De Hart, 109 La. 570, 33 So. 605, merely states the rule of testimony of prior acts being admissible, but the opinion shows nothing as to who may testify to such acts.

An opinion by Judge Christiancy in People v. Jenness, 5 Mich. 305, is approved in People v. Skutt, 96 Mich. 449, 56 N. W. 11, as clearly stating the reasons for the admission of acts of sexual intercourse, in incest. The facts in that case show the prior acts were testified about by the female. Judge Christiancy said: "The general rule in criminal cases is well settled, that the commission of other, though similar offenses, by the defendant, cannot be proved for the purpose of showing that he was more likely to have committed the offense for which he is on trial, nor as corroborating the testimony relating to the commission of the principal offense. But the courts in several of the states have shown a disposition to relax the rule in cases where the offense consists of illicit intercourse between the sexes; and it is principally to the American cases that we are to look for authorities on this subject." The point was made that the testimony ought to be from another and not allow the accomplice to corroborate herself in this way, and Judge Christiancy admitted that "It is true the considerations already stated do not apply to her testimony with the same force as that of other witnesses, but we think they fully justify the propriety of testimony by other witnesses," and he said: "There is no ground upon which an accomplice can be excluded from testifying to any facts to which any other witness may testify." Then the judge goes on to argue that where the defendant is in no danger of being convicted for the prior offenses, because they were barred by the statute of limitations, they could be shown, as a means of making appear more probable what she testified about the offense charged.

In State v. Kemp, 87 N. C. 538, the anterior acts would seem to be only those which are protected by the statute of limitations. Com. v. Bell, 166 Pa. 406, 31 Atl. 123, seems to regard the principle of prior acts being admissible as having an extension in their inclusion of the acts so barred. Judge Christiancy argues, and the North Carolina seems to so proceed, that they may be admissible while those within the statutory period might not be. It rather seems Judge Christiancy takes the juster view.

The Clifton case merely goes on the theory that rape and incest are distinguishable from adultery, as each act constitutes a separate offense and prior acts "in no way tend to develop the *res gestae*, show intent, or connect the defendant with the case on trial."

In Sykes v. State, 112 Tenn. 572, 82 S. W. 185, 105 Am. St. Rep. 972, an incest case was ruled as coming under the general rule as to sexual crimes, viz., that prior and subsequent acts show the relation and mutual disposition of parties. But why should this rule apply to incest, in which "mutual disposition" is a mere incident, while it is of the essence in a case of adultery?

We have examined a great many cases and find none squarely supporting the principal case, except that some say proof of subsequent acts is inadmissible, but at the same time it looks like the exception to the rule has been made too broad. It does not appear that an accomplice should thus be allowed to corroborate herself. If it is testimony, instead of evidence, that needs corroboration, a perjured witness may be left free to appeal to her imagination and inventive faculty for all the corroboration she needs. C.

JETSAM AND FLOTSAM.

INCREASE OF SALARIES OF FEDERAL JUDGES.

To the Members of the Bar.

A bill has been introduced in Congress by Representative Moon of Pennsylvania increasing the federal judges' salaries as follows:

Chief Justice Supreme Court	$13,000 to	$18,000
Associate Justices	12,000 to	17,500
Circuit Judges	7.000 to	10,000
District Judges	6,000 to	9,000

The increase asked for one hundred and twenty-four judges, carries an additional annual appropriation of only $384,000.

You are requested to give this measure your support and to immediately express to your senators and representatives your views upon this subject.

John C. Spooner, Chairman,
Charles E. Littelfield,
Henry W. Taft,
Charles C. Burlingham,
Robert C. Morris,
Earl D. Babst,
William V. Rowe,
John W. Griggs,
Abram I. Elkus,
Lindsay Russell,
Eugene C. Worden. Cor. Sec'y, 165 Broadway, New York,
Committee on Federal Judges' Salaries.

New York, March 25, 1910.

[We received the above communication from Mr. Eugene C. Worden, corresponding secretary of a Committee on Federal Judges' Salaries.

We do not know who originated or constructed this committee, but we are in hearty sympathy with their propaganda on one condition.

That one condition is the abolishment of life tenure for district and circuit judges, and providing in lieu thereof a term of ten years.

We are ready to admit that our convictions on this question have only recently become fixed.

We have reasoned as often as anybody in favor of life tenure, on the ground that it produces better judges.

Our views have changed.

First, because life tenure, while it secures independence of political influence, frequently promotes disregard of proper criticism.

Second.—It keeps on a bench men who become subsequently unfit for service.

Third.—The method of removal, to-wit, by impeachment, is often an impossible remedy, no lawyer desiring to become a prosecuting witness.

Fourth.—Because it has aroused a suspicion of unloyalty to the people's interest and thus impaired public confidence.

Fifth.—Because it has promoted an insolent disrespect of state sovereignty, and thus antagonized state courts and legislatures, producing unnecessary ruptures.

Sixth.—Because it is not necessary for the election or selection of the best men in the profession.

We are not now advising a change in the methods of selection. It might be wise to still leave the appointment with the president, with the opportunity on the part of the senate, the people's representative, to reject a judicial nominee thus appointed every ten years.

With the abolishment of life tenure, we will go heartily along with everybody in favor of a large increase of salary for the federal judiciary.

Our remarks have no reference to the Supreme Court, but only to the lower federal courts.

Abolish the life tenure.—Editor.]

BOOK REVIEWS.

ESTATE ACCOUNTING.

This book is the product of a collaboration between Frederick K. Baugh, expert accountant, and William C. Schmeisser, A. B. LL. B., of the Baltimore bar.

Its purpose is to give estate accountants the general legal principles upon which estate accounting is based, and to show their practical application. The principal authorities used are Schouler's Treatises on Executors and Administrators and Wills, and Loring on a Trustee's Handbook.

The plan is well brought out, and the theory that should control in estate accounting is clearly explained and illustrations and forms of its application are given, in logical and chronological sequence, so that executors and administrators may both administer their trust properly and cause the evidence thereof properly to appear.

The volume is in law buckram, of typographical excellence, contains, with index, over 300 pages and published by M. Curlander, Law Bookseller, etc., Baltimore, Md., 1910.

AMERICAN STATE REPORTS, VOL. 129.

This volume shows that this publication is fully up to the standard Mr. A. C. Freeman has set in legal literature.

There are many monographs in the volume, presumably from the pen of Mr. Freeman. A very extensive one is on the right of an accused to confrontation and its invasion. Another is Equitable Jurisdiction to Construe a Will. Another, Constitutional Limitations on Power to Impose License on Occupation Taxes. Still another refers to Dedication to and Acceptance of a Public Street. There are still others, and the usual references at end of cases showing prior treatment of what is ruled on the selected cases this volume contains.

Published by Bancroft-Whitney Company, San Francisco, Cal.

BOOKS RECEIVED.

The Principles of Argument. By Edwin Bell, LL.B. Toronto: Canada Law Book Company, Limited. Philadelphia: Cromarty Law Book Company. 1910. Review will follow.

American Electrical Cases (Cited Am. Electl. Cas.). Being a collection of all the important cases (excepting patent cases) decided in the state and federal courts of the United States from 1873, on subjects relating to the telegraph, the telephone, electric light and power, electrical railway, and all other practical uses of electricity. With annotations. Edited by Austin B. Griffin, of Albany, N. Y., bar. Vol. IX., 1904-1908. Albany, N. Y. Matthew Bender & Company. 1910. Review will follow.

HUMOR OF THE LAW.

He was a little German man, and as he boarded the car he had such a happy smile on his face that the smoker on the platform asked:

"Well, Jacob, is this a Happy New Year's for you?"

"She vhas so happy dot maype I bust myself oop!" was the reply.

"Something good has happened, eh?"

"Der best effer. Schmidt und I vhas partners from to-day."

"Let's see? Schmidt is in the ice business, I believe?"

"He vhas."

"And you have been working for him?"

"Shust so."

"And to-day——?"

"Und to-day we vhas partners. I vhas tooken in. Schmidt he handles all der money und I handles all der ice. By golly but I vhas a happy mon!"

The presence in Washington last week of former Senator William A. Clark of Montana recalled to the mind of some Westerners a story of his aversion to large tips, although he's one of the wealthiest men in the country.

One of the Senator's sons, when in Butte, always went to a certain well-known barber shop and always procured the services of a particular barber, to whom he frequently gave a tip amounting to $5.

The Senator himself went into this shop one day, jumped into the chair of his son's favorite tonsorial trifler, and after going through several degrees of barbering, gave the man a 25-cent gratuity.

"Your son gives me $5 every time he comes here," remarked the barber casually.

"Yes," replied the Senator, "but he has a rich father. I haven't."

"The recent press reports touching the use of whisky by juries in Tennessee," says a New York lawyer, telling twice-told tales, "reminds me of an amusing incident in connection with a trial I once witnessed in Arkansas.

"The defendant had been accused of selling adulterated liquor, and some whisky was offered in evidence. This was given the jury as evidence to assist in its deliberations.

"When they finally filed into court, His Honor asked:

"'Has the jury agreed on a verdict;'

"'No, your Honor,' responded the foreman, 'and before we do, we should like to have more evidence.'"

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Abortion**—Accomplice.—To "advise' and "procure" a pregnant woman to use an instrument with intent to cause her miscarriage, held to be a use thereof.—Greenwood v. State, Okl., 105 Pac. 371.

2. **Accident Insurance**—Waiver of Right to Proofs of Loss.—Where an accident insurance company denied its liability on a policy before the time for filing proof of loss had expired, they thereby waived their right to proof of loss.—Mellen v. United States Health and Accident Ins. Co., Vt., 75 Atl. 273.

3. **Adoption**—Validity.—A decree of adoption by a wife of her husband's child by a former wife may be set aside for undue influence exerted by the husband, at the suit of the wife's heirs, after the death of both the wife and the child.—Phillips v. Chase, Mass., 89 N. E. 1049.

4. **Adultery**—Persons Entitled to Prosecute.—The obtaining of a divorce by the wife of an accused charged with adultery held not to deprive the court of the power to try him under Wilson's Rev. & Ann. St. 1903, sec. 2264, requiring the prosecution to be carried on against the husband by his wife.—Ex parte Cranford, Okl., 105 Pac. 367.

5. **Adverse Possession**—Admission of Title in Another.—An occupant of land, admitting in writing that it belongs to another, voluntarily submits to the other's title and surrenders any right acquired by prior possession.—Dill v. Westbrook, Pa., 75 Atl. 252.

6. **Agriculture**—Negligence at Fairs.—A boy, present at a fair at the invitaton of a company running the fair, is entitled to the exercise of ordinary care on the part of the company to protect him against dangerous agencies, known by it to exist and permitted on its grounds, set apart for the use of the public.—Plasket v. Benton-Warren Agricultural Society, Ind., 89 N. E. 968.

7. **Animals**—Police Power.—The legislature, in the exercise of its police power, may provide for the summary destruction of dogs without judicial proceedings.—McDermot v. Taft, Vt., 75 Atl. 276.

8. **Appeal and Error**—Abstract of Record.—An abstract of record is fatally defective where it does not contain a copy of the judgment, notice of appeal, proof of service thereof, or the undertaking on appeal, as required by B. & C. Comp., sec. 553.—Burchell v. A. H. Averill Machinery Co., Or., 105 Pac. 403.

9.——Bill of Exceptions.—Where, in a bill of exceptions, error is assigned upon the overruling of a demurrer and upon matters depending upon the evidence, and because of defects in record the latter assignment cannot be considered, the bill presents for consideration only the ruling on the demurrer.—Davis v. Smith, Ga., 66 S. E. 401.

10. **Arrest**—Bench Warrant.—The declaration of Bill of Rights, sec. 30, that no warrant shall issue but upon probable cause, supported by oath, describing the person to be seized, held without application to a bench warrant issued upon an information filed pursuant to the finding of an examining magistrate.—Ex parte Cranford, Okl., 105 Pac. 367.

11. **Assignments**—Fund Due Sub-Contractor.—An accepted order given by the sub-contractor to a materialman held to operate as an assignment pro tanto of the contract price, subject only to the condition that the contract should be performed.—Hall v. Jones, N. C., 66 S. E. 350.

12.——Order Payable Out of Particular Fund.—The payee of an order payable in chattels or out of a particular fund, if he fails to receive the property, cannot sue the drawer on the order, but on the original consideration.—Maynard v. Maynard, Me., 75 Atl. 299.

13. **Audita Querela**—Execution—If a final judgment against defendant was merged into a judgment subsequently obtained by plaintiff on scire facias against defendant's debtors factorized into the action, defendant's remedy to prevent the enforcement of the judgment was by a proceeding in the nature of an equitable action or of audita querela.—Russell Lumber Co. v. J. E. Smith & Co., Conn., 74 Atl. 949.

14. **Bail**—Personal Cash Deposit of Defendant.—Where cash is deposited as bail by defendant in criminal proceedings, and the payment is unauthorized by law, it is considered a personal deposit of defendant and can only be recovered by him or by his creditors.—Doane v. Dairymple, N. J., 74 Atl. 964.

15. **Bailment** — Pleadings. — Where issue whether warehouseman used common prudence is raised, proof of conditions putting him under the duty of exercising greater care held admissible.—Netzow Mfg. Co. v. Southern Ry. Co., Ga., 66 S. E. 399.

16. **Bankruptcy**—Avoidance by Trustee.—Where, after adjudication of bankruptcy, attempt is made by an existing creditor, by means of court process, to obtain an advantage within the United States, or secure a preferential lien, the same will be avoided on timely and proper application by the trustees.—Ward v. Hargett, N. C., 66 S. E. 340.

17.——Effect of Discharge.—A discharge in bankruptcy extinguishes a pre-existing debt, and is not merely a bar to the remedy thereof.—Needham v. Matthewson, Kan., 105 Pac. 436.

18. **Banks and Banking**—Action to Recover Deposit.—In an action against a bank to recover an alleged deposit claimed by defendant to have been private loans to the cashier, nature of the transaction held for the jury.—Greenhalgh Co. v. Farmers' Nat. Bank, Pa., 75 Atl. 260.

19.——Fraudulent Insolvency.—Mere mismanagement resulting in the insolvency of a bank held not punishable, but insolvency indicating intentional fraud or dishonesty is.—Youmans v. State, Ga., 66 S. E. 383.

20.——Knowledge of Directors.—Where the principal directors of a bank are directors of a corporation whose property is heavily mortgaged to it, it should be held to have notice that fixtures of considerable value covered by the mortgage were not paid for, and were bought under a conditional sale contract.—State Bank of Williamson v. Fish, 120 N. Y. Supp. 365.

21. **Benefit Societies**—Non-Payment of Assessment.—A beneficiary does not have such a vested interest as to entitle him to pay a past-due assessment without a member's consent.—Proctor v. United Order of the Golden Star, Mass., 89 N. E. 1042.

22. **Bills and Notes**—Forged Check.—Where a drawee of a forged check pays it to a bona fide holder, who is without fault, he cannot recover the money from such holder.—Bank of Williamson v. McDowell County Bank, W. Va., 66 S. E. 761.

23. **Burglary**—Ownership.—A carrier has such an interest in goods while in its custody for transportation as will support an allegation of ownership in an indictment for burglary.—Hall v. State, Ga., 66 S. E. 390.

24. **Carriers**—Action for Loss of Freight.—In an action against a carrier for loss of goods, the freight having been paid by the consignor, the measure of damage was the value of the goods at the point of shipment plus the freight.—De Schamps v. Atlantic Coast Line Ry. Co., S. C., 66 S. E. 414.

25.——Ejection of Passengers.—A carrier is liable for the ejection a passenger who is on the wrong train by the erroneous instructions of its ticket agent, though the ejection was without rudeness or malice.—Mace v. Southern Ry. Co., N. C., 66 S. E. 242.

26.——Injury to Goods.—In an action for damages to goods carried against the last of a succession of connecting carriers, the last carrier is liable, though part of the damages occurred on the line of a preceding carrier.—Coffroth v. Bangor & A. R. Co., Me., 74 Atl. 918.

27.——Injury to Licensee.—A person injured while riding on a freight train not being a passenger, even if a licensee, cannot avail himself of a presumption of negligence from the mere fact of a collision.—Bergan v. Central Vermont Ry. Co., Conn., 74 Atl. 937.

28.——Injury to Live Stock Shipment.—The delivery by a carrier in bad condition of live stock received in good condition warrants, in the absence of explanation, an inference of negligent handling, but not of a wanton or willful breach of duty.—Mayfield v. Southern Ry. Co., S. C., 66 S. E. 405.

29.——Injury to Passenger on Scenic Railway.—In an action for injuries by being thrown from a scenic railway, testimony for plaintiff tending to show that the injury was caused by apparatus wholly under defendant's control while plaintiff was using due care held to raise a prima facie presumption of negligence.—O'Callaghan v. Dellwood Park Co., Ill., 89 N. E. 1035

30.—Loss by Public Enemy.—The terms "public enemy" under the rule that a carrier is liable for the loss of goods except by act of God, or the public enemy, means enemy of the country, and does not include mobs.—Pittsburg, C., C. & St. L. Ry. Co. v. City of Chicago, Ill., 89 N. E. 1022.

31.——Misdescription of Goods Shipped.—Where a shipper of cigars without fraud or negligence which misled the carrier shipped them as smoking tobacco for a less rate, he was not thereby precluded from recovering the value of the cigars and the freight paid in case of loss.—Jenkins v. Atlantic Coast Line R. Co., S. C., 66 S. E. 407.

32. **Charities**—Business Transactions.—The power of a religious, missionary, educational, and charitable corporation to take and sell real estate is purely incidental in the prosecution of its main purpose.—General Conference of Free Baptists v. Berkey, Cal., 105 Pac. 411.

33. **Conspiracy**—Civil Liability.—Where two or more persons conspire to do a lawful act in a lawful manner, from which damages flow, the malicious motives and the conspiracy do not give rise to a cause of action which would not otherwise exist.—Cohen v. Nathaniel Fisher & Co., 120 N. Y. Supp. 546.

34. **Conspiracy**—Prior Advertising.—In a contract for the construction of floors of certain material, the advertising matter sent by plaintiff to defendant some months before the contract, in relation to the material, held not a part of the contract.—Asbestolith Mfg. Co. v. Howland, 120 N. Y. Supp. 93.

35. **Convicts**—Corporal Punishment.—Corporal punishment, administered to convicts by a warden or other officer under circumstances not authorized by law, amounts to an assault.—Westbrook v. State, Ga., 66 S. E. 788.

36. **Corporations**—Contracts.—Minutes of proceedings of a corporation are not binding on one seeking to enforce against it a contract claimed to have been made in its behalf, not shown thereon, and a corporation could not vitiate a contract by failing to have it noted.—Farjeon v. Indian Territory Illuminating Oil Co., 120 N. Y. Supp. 298.

37.——Doing Business in Foreign State.—A single sale of real estate of a foreign religious, missionary, educational or charitable corporation held not a transaction of business within Const. art. 12, sec. 15, so that the failure to comply with Civ. Code, sec. 598, did not render the sale invalid.—General Conference of Free Baptists v. Berkey, Cal., 105 Pac. 411.

38.——Names.—The use of a society's corporate name by another held to be an infringement, constituting ground for injunction.—Salvation Army in United States v. American Salvation Army, 120 N. Y. Supp. 471.

39.——Purchase of Stock.—A corporation to which money was paid for stock and directors whose false representations induced its purchase and payment of money to the corporation can be joined in one action to rescind the purchase, and recover back the money paid.—Lehman-Charley v. Bartlett, 120 N. Y. Supp. 501.

40. **Costs**—Parties Liable.—Where the court decrees that plaintiff take nothing, and that the appointment of a receiver was wrongful, it was not error to tax plaintiff with costs of

the receivership.—Bellamy v. Washita Valley Telephone Co., Okl., 105 Pac. 340.

41. **Covenants**—Construction.—It being no longer lawful to levy a tax on interest on corporate bonds, a covenant by a railroad company to pay taxes on its mortgages, or the bonds secured thereby, or the income thereon, cannot be held applicable to such a tax.—Musgrove v. Baltimore & O. R. Co., Md., 75 Atl. 245.

42. **Criminal Evidence**—It is not necessary to sustain a conviction that evidence should show the guilt of defendant beyond the possibility of a doubt, but only beyond a reasonable doubt.—State v. Draughn, Mo., 124 S. W. 20.

43. **Criminal Law**—Judicial Notice.—Judicial notice will be taken that prior to statehood, November 16, 1907, there was no such county as Pontotoc in Oklahoma.—Rea v. State, Okl., 105 Pac. 386.

44. **Criminal Trial**—False Pretenses.—An information under Penal Code, sec. 746a, charging defendant with drawing a check with intent to defraud "Lesser Bros. Co., a corporation," while the check was payable to "Lesser Bros. Co.," held sufficiently definite to show what was intended to be charged.—People v. Russell, Cal., 105 Pac. 416.

45.——Fixing Punishment.—Where the jury illegally fixes the punishment, and the court in passing sentence assesses the punishment fixed by the jury, the verdict will not be set aside unless the punishment fixed is excessive.—Baker v. State, Okl., 105 Pac. 379.

46.——Instructions.—Remarks of the court regarding Pub. Acts 1907, p. 825, c. 221, sec. 12, when construed with other charges, held not objectionable as authorizing the jury to find the accused guilty of manslaughter if they found that he did not reduce the speed of his automobile when he passed deceased.—State v. Campbell, Conn., 74 Atl. 927.

47. **Death**—Action for Negligent Death.—Where, in an action for death, the evidence showed that the death was caused by the negligence of defendant, a recovery could be had, though the negligence was not wanton or willful as alleged in the declaration.—Guianios v. De Camp Coal Mining Co., Ill., 89 N. E. 1003.

48. **Descent and Distribution**—Sale of Land.—Where a judicial sale of land, descended to heirs, is made to satisfy a lien on it and purchased by the lien owner and is thereafter set aside for fraud, the lien held not thereby extinguished.—Harvey v. Nutter, W. Va., 66 S. E. 363.

49. **Disturbance of Public Assemblage**—Construction of Statute.—Revisal 1905, sec. 3706, held to protect regularly established places of public worship, but not an exceptional meeting, consisting of a family reunion, meeting from time to time at the homes of the members of the family, but such meeting is within section 3704.—State v. Starnes, N. C., 66 S. E. 347.

50. **Drains**—Two-thirds Remonstrance.—In computing whether two-thirds in number of landowners named in a petition for a drain or who may be affected by any assessment or damages have signed a remonstrance provided by Drainage Act 1907, sec. 3 (Burns' Ann. St. 1908, sec. 6142), all resident owners of land named in the petition and resident owners of land at the time of filing the remonstrance must be counted.—Thorn v. Silver, Ind., 89 N. E. 943.

51. **Evidence**—Judicial Notice.—It is a matter of common knowledge that there is no strictly transcontinental line of railroad in the United States operated by a single company, though one may procure a ticket from one seaboard to the other, traveling over connecting lines of railroad.—Brian v. Oregon Short Line R. Co., Mont., 105 Pac. 489.

52. **Executors and Administrators**—Establishment of Claims.—Where one promises to pay another by will for services rendered, but died without making a will, and the services were performed pursuant to the agreement, there could be a recovery for the value thereof, not exceeding the amount which claimant should have received by will.—Appeal of Hull, Conn., 74 Atl. 925.

53. **Food**—Sale of Condemned Meat.—A sale of meat for food after it had been inspected by a local board of health inspector, as authorized by Rev. Laws 1902, c. 75, sec. 102, and St. 1903, p. 119, c. 220, held not illegal, though a state board of health inspector condemned the meat.—Commonwealth v. Prince, Mass., 89 N. E. 1047.

54. **Fraud**—Grounds of Action.—The purchaser of corporation securities held not entitled to maintain an action for fraud on the grounds of overcapitalization of the corporation.—Lane v. Fenn, 120 N. Y. Supp. 237.

55. **Gaming**—Common Law.—Under Penal Code, sec. 351, a person making oral bets on a horse race held not a bookmaker.—People v. Langan, N. Y., 89 N. E. 921.

56.——Executors and Administrators.—A transaction between an executor and a stockbroker, whereby funds of the estate are turned over to the latter for the purpose of speculating in stocks though both parties are in good faith, is an unlawful investment, and may be recovered back by the estate.—Steele v. Leopold, 120 N. Y. Supp. 569.

57.——Money Placed in Another's Hands.—Where a person places money in the hands of another to be used for gaming and recalls it before it is used, the party in whose hands the money is must repay it.—Kohler v. Rosenthal, 120 N. Y. Supp. 325.

58. **Homicide**—Justifiable Homicide.—Under Pen. Code 1895, sec. 70, held that a person is not justified in killing another, attempting without provocation to commit a felony on him, unless necessary to prevent the commission of the crime, or the circumstances would excite the fears of a reasonable man.—Lyens v. State, Ga., 66 S. E. 792.

59.——Premeditation and Deliberation.—While, under the statute, to constitute murder in the first degree, premeditation and deliberation must precede the act of killing, no particular lapse of time need occur between the two; it being enough that sufficient time elapses for the jury to find as a matter of fact that premeditation and deliberation did exist.—People v. Jackson, N. Y., 89 N. E. 924.

60. **Husband and Wife**—Earnings of Husband.—Delivery of a husband's earnings to the wife who acted as treasurer of the family held not to justify a presumption of gift to her.—Beck v. Beck, N. J., 75 Atl. 228.

61.——Fraudulent Representations of Husband.—Where a farm sold by a husband and wife was not the wife's separate estate, her responsibility for false representations, made in respect thereof by the husband, is to be measured by the common law, and not by P. S.

3037, enlarging the powers of married women. —Rowley v. Shepardson, Vt., 74 Atl. 1002.

62. **Habeas Corpus**—Custody of Child.—In habeas corpus a child held under the circumstances of the case, to properly be left in the custody of foster parents, rather than in that of his mother.—Ex parte Fields, Wash., 105 Pac. 466.

63.——Judgment Without Evidence to Support.—A judgment, though founded on no evidence, is not void, so as to be subject to attack by habeas corpus, where defendant has actually or constructively had his day in court.—Davis v. Smith, Ga., 66 S. E. 401.

64. **Insane Persons**—Proceedings to Sell Land. —Where a court orders a lunatic's committee to sell lands, and authorizes him to apply to the court in another county for an order to sell land therein, the record must show that the lunatic's widow and heirs were served with notice of the proceedings.—Patchin v. Seward Coal Co., Pa., 75 Atl. 250.

65. **Intoxicating Liquors**—Illegal Sale.—Where the information charges a liquor nuisance to have been maintained in a building on a specifically described tract of land, it is error to admit evidence that it was maintained at a place outside of said tract.—State v. O'Neal, N. D., 124 N. W. 68.

66. **Jury**—Competency of Juror.—A juror, whose wife was related within the fourth degree to persons who had contributed to a fund for the employment of counsel to prosecute the case, and were hence voluntary prosecutors, was not competent to sit on the jury.—Lyens v. State, Ga., 66 S. E. 792.

67. **Judgment**—Conformity to Pleadings.—Plaintiff, having pleaded a cause of action on the theory of defendant's liability on an express promise to pay the debt of a corporation, could not recover on the theory that defendant was a partner.—Yracheta v. Stafford, 120 N. Y. Supp. 117.

68.——Contempt.—Order as to custody of children held within protection of federal constitution, declaring that full faith and credit shall be given to judicial proceedings of other states.—Dixon v. Dixon, N. J., 74 Atl. 995.

69.——Equitable Relief.—Where property was sold after judgment by default in a mechanic's lien proceeding, held that the owner of the property, failing to receive process without his own fault, could compel a reconvevance or have the lien proceeding opened.—Mierke v. Sebecke, N. J., 74 Atl. 977.

70. **Judicial Sales**—Title of Purchaser.—The legal title does not vest in the purchaser at a judicial sale until the delivery of the deed, and in the meantime the property is held in trust for him and the beneficial ownership of the property is vested in him, so that any increase or decrease in value inures to him.—Cropper v. Brown, N. J., 74 Atl. 987.

71. **Landlord and Tenant**—Holding Over Under Lease.—Under a lease providing that the lessee had the right to renew for two years, that after the termination of the lease the lessee held over and paid monthly rents under the same terms as the old lease for eight months did not amount to a formal renewal of the lease, as required by its terms.—Leavitt v. Maykell, Mass., 89 N. E. 1056.

72.——Injuries to Third Person.—The only duty of lessees of a theater to a member of a theatrical company performing therein was to use reasonable care to keep the building in reasonable repair; such person not being their employee.—Mitcheltree v. Stair, 120 N. Y. Supp. 540.

73.——Title to Grain.—No title is acquired by a landlord to grain raised by the tenant until the division and delivery thereof to him.—Eaves v. Sheppard, Idaho, 105 Pac. 407.

74. **Limitation of Actions**—Continuing Trespass.—Trespass from diversion of surface water held not a continuing trespass, within the statute of limitation.—Roberts v. Baldwin, N. C., 66 S. E. 346.

75. **Master and Servant**—Action for Wages.—Where, though plaintiff was employed by the month, he was to be paid only for the days he actually worked, held that he could not recover wages during his suspension.—Southern Ry. Co. v. Everett, Ga., 66 S. E. 398.

76.——Acts of Fellow Servants.—If an employee's injury resulted from the negligence of a fellow servant in not selecting a reasonably safe appliance, provided by the employer, or by such fellow servant's negligence in subjecting a proper appliance to a strain not reasonably to be anticipated, the employer would not be liable therefor, in absence of statute.—Mulligan v. McDonald, 120 N. Y. Supp. 522.

77.——Contributory Negligence.—An employee who voluntarily places himself in a dangerous position, where he was not required to be in the performance of his work, cannot recover for injuries caused by such unsafe position.—O'Hara v. O'Rourke Engineering Const. Co., 120 N. Y. Supp. 404.

78.——Knowledge of Defects.—A street railway company is not liable for injuries to its motorman from defects in the track of another company, over which he operated the car on the part of the route, in the absence of knowledge of such defects.—Powell v. Cohoes Ry. Co., 120 N. Y. Supp. 336.

79.——Negligence.—A driver held not negligent as matter of law in suddenly bringing his horse to a stop on a level street upon discovering that the trace was unhitched.—Lundergan v. Graustein & Co., Mass., 89 N. E. 1034.

80. **Monopolies**—Combinations.—A corporation acquiring control of other corporations and making use of contracts acquired by them held liable for violating the anti-monopoly act (Consol. Laws, c. 20, secs. 340-346).—People v. American Ice Co., 120 N. Y. Supp. 443.

81. **Mortgages**—Agreement to Insure.—Payment of premium for insurance by the mortgagor to the mortgagee held not a sufficient consideration for the mortgagee's promise to take out the insurance which was nudum pactum, unless a part of the mortgage transaction.—Hudson v. Ellsworth, Wash., 105 Pac. 463.

82. **Municipal Corporations**—Regulating Speed of Automobiles.—The state under its police power may regulate the speed of automobiles, and enact other reasonable rules as to their use upon highways.—State v. Mayo, Me., 75 Atl. 295.

83.——Use of Streets.—Where an ambulance driver drove on the wrong side of the way under an apparent claim of right, and kept it in making a turn, it was an abuse of his rights.—Kellogg v. Church Charity Foundation of Long Island, 120 N. Y. Supp. 406.

84. **Negligence**—Children.—Whether a boy is guilty of contributory negligence must be measured by the care to be expected of a boy of his age and environment at the time of the accident.—Ritscher v. Orange & P. V. Ry. Co., N. J., 75 Atl. 209.

85.——Dangerous Premises.—An owner held liable to one injured by the fall of a fire escape, on which he had stepped to make an examination for the purpose of making an estimate, at the request of the owner, of the cost of taking it down.—Grill v. Gutfreund, 120 N. Y. Supp. 86.

86. **Partnership**—Death of Partner.—The interest of a deceased partner held properly chargeable with a proportionate part of an amount carried in the partnership's suspense account as representing the excess of liabilities

over assets.—Shearman v. Cameron, N. J., 74 Atl. 979.

87. **Physicians and Surgeons**—Liability for Malpractice.—Where the evidence shows that the tubercular disease of plaintiff's hip joint had progressed so as to be incurable before defendant undertook its treatment, defendant cannot be held liable for failure to effect a cure.—Lubbe v. Hilgert, 120 N. Y. Supp. 387.

88. **Principal and Agent**—Payment of Checks. —Where the agent had authority to indorse and cash a check given him for his principal, the bank on which it was drawn is not liable to the principal on the agent's subsequent misappropriation of the money.—Porges v. United States Mortgage & Trust Co., 120 N. Y. Supp. 487.

89. **Principal and Surety**—Persons Bound.—Plaintiff, who merely signed a contract under a statement that it thereby consented to the contract which was in terms between defendant and certain corporations who signed it, held not bound as surety for the performance by such corporations of their obligations under the contract.—Henry O. Shepard Co. v. Freeman, Mont., 105 Pac. 484.

90. **Railroads**—Conditions Contained in Ticket.—A coupon ticket issued by an initial carrier as agent for subsequent carriers held not to entitle the passenger to carriage over the last line after the time limited for transportation to destination had expired, though prevented from presenting his ticket within the time limited by the fault of the other carriers.—Brain v. Oregon Short Line R. Co., Mont., 105 Pac. 489.

91.——Fires.—Under P. S. 4510, if a fire along a railroad right-of-way is caused by sparks from the locomotive, the burden is on the company to prove that it employed the best spark arresters in use, and exercised due care in managing the engine.—Huntley v. Rutland R. Co., Vt., 74 Atl. 1000.

92.——Injury to Animals on Track.—Railroad held not required to check train when an animal is seen near the track, except in certain cases.—Augusta Southern R. Co. v. Carroll, Ga., 66 S. E. 403.

93. **References**—Nature of Office of Auditor.—An auditor is an officer of the court, whose duty is to present to the court the contentions of parties and his rulings and conclusions thereon. —Hale v. Owensby, Ga., 66 S. E. 781.

94. **Searches and Seizures**—Concealed Weapons.—Defendant held not within the constitutional guaranty against an unlawful search and seizure of his person, so as to make evidence of the fact that he was carrying a weapon inadmissible.—Brookins v. State, Ga., 66 S. E. 398.

95. **Specific Performance**—Defenses.—Specific performance of a contract for the sale of land cannot be defeated by the drafting of a substituted contract according to the verbal agreement of the parties, but which was never executed.—Bourke v. Kissack, Ill., 89 N. E. 990.

96. **States**—Crimes Committed Before Statehood.—Where defendants were indicted in the district court, after statehood, for a crime committed prior thereto, and the prosecution was transferred to the county court, held that it had jurisdiction.—Baker v. State, Okl., 105 Pac. 379.

97. **Street Railroads**—Contributory Negligence of Child.—A boy 3 1-2 years of age, paying fag near a street railway track, is not, as a matter of law, guilty of contributory negligence in failing to avoid an approaching car.—McFarland v. Elmira Water, Light & R. Co., 120 N. Y. Supp. 292.

98.——Gross Earnings Tax.—Where a street railroad subject to a gross earnings tax for a township connected with other lines transported passengers for a single fare, the gross earnings should be prorated in accordance with the mileage in determining the amount of the tax.—Asbury Park & S. G. R. Co. v. Neptune Tp., N. J., 74 Atl. 998.

99.——Riding on Running-Board.—A person riding on the running-board of a street car, recognized as a passenger by collection of his fare, held not, as a matter of law, negligent, if subsequently injured through the carrier's carelessness.—Eldredge v. Boston Elevated Ry. Co., Mass., 89 N. E. 1041.

100. **Subrogation** — Outstanding Lien.—A grantee under warranty deed may purchase outstanding liens against the land, and be subrogated to the rights of the lienholders.—Maitlen v. Maitlen, Ind., 89 N. E. 966.

101. **Sunday**—Work of Necessity.—Pen. Code 1895, sec. 420, making it a misdemeanor to run freight or excursion trains on Sunday, excepting mail or passenger trains, held a legislative construction that the running of those trains is within the exception of section 422, forbidding other than works of necessity or charity on Sunday.—Southern Ry. Co. v. Wallis, Ga., 66 S. E. 370.

102. **Taxation**—Franchise Tax.—In determining the value of tangible corporate property by the net earnings rule, where the property is practically indestructible by use or is nearly new, the cost of reproduction indicates its value. —People v. State Board of Tax Com'rs, 120 N. Y. Supp. 528.

103.——Informal Entry.—An informal entry of an increase of valuation of property by the county commissioners held the act of the board of equalization.—Holton Electric Co. v. Board of Com'rs of Jackson County, Kan., 105 Pac. 453.

104.——Inheritance Tax.—Under the inheritance tax law (Hurd's Rev. St. 1908, c. 120, secs. 366-388), a sum which the devisees paid out of the estate to a disinherited heir in consideration of her agreement not to contest the will held taxable to the residuary legatees.—In re Graves' Estate, Ill., 89 N. E. 978.

105.——Mortgages.—Mortgages of land in this state owned and held by non-residents as well as residents, may rightfully be assessed where the land is situated.—Musgrove v. Baltimore & O. R. Co., Md., 75 Atl. 245.

106.——Oil and Gas.—Where separate assessment is not made against oil and gas, severed in title from land, a sale of the land for taxes held to carry the oil and gas.—Wellman v. Hoge, W. Va., 66 S. E. 357.

107. **Vendor and Purchaser**—Construction of Contract.—A bond conditioned on the obligor maintaining his weak-minded brother held to bind the obligor to supply the reasonable needs of the latter.—Rhyne v. Rhyne, N. C., 66 S. E. 348.

108.——Forfeiture.—A purchaser held not entitled to recover the cash payments made, on it appearing that the vendor tendered performance before any claim of forfeiture by the purchaser. —Price v. Leo, Wash., 105 Pac. 469.

109.——Option Contracts.—Where an option is without consideration, the owner may revoke it before the expiration of the time limit, if an acceptance has not been communicated to the owner.—Canty v. Brown, Cal., 105 Pac. 428.

110. **Waters and Water Courses**—Irrigation.— The beneficial use and the needs of the appropriators of water for irrigation, and not the capacity of the ditches, or quantity first run through them, is the measure and limit of the right of the appropriators.—Whited v. Cavin, Ore., 105 Pac. 396.

111.——Sale of Water.—Where plaintiff notified defendant that he would demand a certain sum for every day the notice not to take water was violated, the subsequent taking of water was not an acceptance of a proposition to sell at a specified price.—Wright v. Sonoma County, Cal., 105 Pac. 409.

112. **Wills**—Agreements Between Legatees.— An agreement of all legatees under a will, except a daughter and another, conveying to testator's sons certain property, held not to bind the daughter.—In re Hiscox, 120 N. Y. Supp. 308.

113.——Election of Widow.—When a widow elects to take her dower rights, being misled as to their nature, she may retract her election, when no rights acquired subsequently thereto will be injuriously affected by a retraction.— In re McFarlin, Del., 75 Atl. 281.

114. **Witnesses**—Impeachment.—An encyclopaedia article cannot be used to attack the reputation for truth and veracity of a gypsy witness.—York v. State, Tex., 123 S. W. 1112.

115. **Work and Labor**—Quantum Meruit.— Where a person bound himself to pay a specific sum for a week's work, and prevented the performance of the contract by the other party, the question of quantum meruit did not arise.— Wheeler v. Woods, 120 N. Y. Supp. 80.